

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

RICHARD ZANE HILL  
TDCJ-CID #680838

V.

LT. BERRERA, ET AL.

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C.A. NO. C-06-106

**AMENDED ORDER GRANTING PLAINTIFF'S MOTION TO PROCEED  
IN FORMA PAUPERIS, SUBJECT TO SANCTIONS**

Plaintiff, a Texas state prisoner currently incarcerated at the McConnell Unit in Beeville, Texas, filed this civil rights action on March 3, 2006, seeking immediate injunctive relief on the grounds that his life is in danger. Plaintiff relates that he had previously been housed separately from another inmate, Offender Tezeno, due to an ongoing conflict, but Offender Tezeno is now housed in the same area as him. Plaintiff claims that he filed a life in danger ("LID") complaint, but that Lieutenant Berrera failed to submit it to the Office of the Inspector General ("OIG") for investigation, and that Sergeant Garcia told plaintiff it was his problem. On February 3, 2006, plaintiff had a classification hearing on his LID, but Major Gordy denied him relief. Plaintiff claims that he filed grievances concerning the denial of his LID, and that his Step 1 grievance was denied, and his Step 2 grievance never answered. He claims that, on an unidentified date, a physical confrontation occurred between him and Offender Tezeno and that he was exposed to the H.I.V. virus. He also claims that he is being threatened by Offender Tezeno's friends.

In his complaint, in response to question VII. A. concerning past sanctions: "Have you been sanctioned by any court as a result of any lawsuit you have filed?", plaintiff answered "No." In fact, however, plaintiff is a three strikes litigant, having had at least two of his cases dismissed as frivolous by this Court, as well as an appeal dismissed as frivolous by the Fifth Circuit. See Hill

v. Cockrell, et al., 2:02cv517 (S.D. Tex. Dec. 31, 2002); Hill v. Cockrell, et al., 03-40203 (5th Cir. 2003) and Hill v. Benavidez, et al., 2:04cv232 (S.D. Tex. Nov. 16, 2004). Pursuant to the three strikes rule, 28 U.S.C. § 1915(g), plaintiff is prohibited now from bringing any more actions or appeals *in forma pauperis* unless he is in imminent danger of serious physical harm. See Banos v. O'Guin, 144 F.3d 883, 884 (5th Cir. 1998); Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996).

Plaintiff was untruthful about his litigation history. However, he has alleged imminent danger with specificity and the only relief he seeks is to not be housed with Offender Tezeno. That is, his complaint does not appear frivolous on his face. Considering these factors, plaintiff's application to proceed i.f.p. (D.E. 2) is GRANTED, and the collection order entered on March 14, 2006 (D.E. 5) remains in effect, requiring plaintiff to pay the full \$250.00 filing fee over time. This case has been scheduled for an evidentiary hearing. Plaintiff is cautioned, however, that should his allegations of imminent danger have no basis in fact, he will be subject to monetary or other sanctions as deemed necessary.

ORDERED this 16<sup>th</sup> day of March 2006.

  
B. JANICE ELLINGTON  
UNITED STATES MAGISTRATE JUDGE